IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1119 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HABIB HAJI SANDHI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE APP for Respondent No. 1 to 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/03/2000

ORAL JUDGEMENT

#. Sub Divisional Magistrate, Morbi, passed an order on August 31, 1999, in exercise of powers under section 56(a) of the Bombay Police Act ("the Act" for short), externing the petitioner from the areas of Vankaner city and areas of districts of Rajkot city, Rajkot (Rural), Surendranagar and Jamnagar, for a period of two years. The said order was passed by the authority after recording satisfaction for the need for preventing the petitioner from pursuing his nefarious activities detrimental to public order.

#. Prior to passing the order, a notice was issued on July 30, 1999 as required under sections 59 of the Act, calling upon the petitioner to show cause as to why he should not be externed from the areas stated above. The authority narrated the details of offences registered against the petitioner with Vankaner City Police Station and statements of 8 anonymous witnesses.

#. After holding the externment proceedings, the impugned order was passed by the externing authority. The said order was challenged before the appellate authority as contemplated under section 60 of the Act. The appellate authority dismissed the appeal after hearing the parties. The petitioner, therefore, has approached this Court, challenging the said orders.

#. The petitioner challenges the orders on various ground. However, Ms. Patel, learned advocate appearing for Ms. Subhadra Patel, learned advocate appearing for the petitioner has restricted her arguments to the fact that the externing authority has externed the petitioner from Vankaner city and contiguous areas of the districts of Rajkot City, Rajkot (Rural), Surendranagar and Jamnagar. He submitted that if the notice is seen, the offences are registered with Vankaner City Police Station. The incidents cited by the witnesses also relate to incidents at Vankaner City. As such, the activities of the petitioner alleged are restricted to the area of Vankaner City. Under the circumstances, it was incumbent upon the externing authority to state as to why the externment orders are passed for the areas of adjoining districts also. No reasons are given and therefore, the order is bad in law and may be quashed and set aside.

#. Mr. K.T. Dave, learned APP has opposed this petition. He submitted that the authority concerned has

given indication in the notice about his intention of externing the petitioner from the areas of contiguous districts and therefore, the petitioner had an opportunity to meet with the notice.

#. Having regard to rival side contentions, it may be noted that neither in the notice nor in the order, any reasons are given by the externing authority for proposed externment of the petitioner from the areas of contiguous districts. In the absence of any grounds or reasons, indicated by the externing authority, it is difficult to appreciate how the authority could have passed this order. This order therefore, cannot be sustained. The area of operation is restricted to Vankaner City only and as such, there was no reason for imposing restriction on movement of the petitioner in all areas beyond the jurisdiction of the externing authority. Under the circumstances, the petition deserves to be allowed.

#. In view of the above discussion, the petition is allowed. The impugned externment order dated 31st August, 1999 passed by respondent no.2 and the impugned order dated 3rd December, 1999 passed by respondent no.3 are hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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